

# SENATE . . . . . No. 1567

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## The Commonwealth of Massachusetts

PRESENTED BY:

**Frederick E. Berry (BY REQUEST)**

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to the duties of judges.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Stefano Picciotto	418 Lafayette Street Salem, MA 01970
Melita Picciotto	418 Lafayette Street Salem, MA 01970

# The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

## AN ACT RELATIVE TO THE DUTIES OF JUDGES.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

SECTION 1. Chapter 220 § 2, is amended by adding the following new paragraphs as

SECTION 2A.:

2A. A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY  
AND DILIGENTLY

A. The judicial duties of a judge take precedence over all the judge's other activities. The  
judge's judicial duties include all the duties of the judge's office prescribed by law. In the  
performance of these duties, the following standards apply.

B. Adjudicative Responsibilities.

(1) A judge shall hear and decide matters assigned to the judge except those in which the judge  
is disqualified.

(2) A judge shall be faithful to the law and maintain professional competence in it. A judge shall  
not be swayed by partisan interests, public clamor, or fear of criticism.

(3) A judge shall maintain order and decorum in proceedings before the judge.

(4) A judge shall be patient and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and shall require similar conduct of court personnel and others.

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, or socioeconomic status, and shall require court personnel and others not to do so.

(6) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, or socioeconomic status, against parties, witnesses, counsel, or others.

(a) A judge shall not allow attorneys to pass candies, gifts or memorabilia of any kind to jurors.

(b) A judge shall not allow jurors to come to court dressed in Halloween costumes or similar inappropriate attire.

(c) A judge shall not allow a cast list to be passed to jurors as to who will play them in a movie.

(d) A judge shall not openly joke in court that Hollywood might make a movie of the case.

(7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider any ex parte communication concerning a pending or impending proceeding, except that:

(a) Where circumstances require, an ex parte communication is authorized when it does not deal with substantive matters and is for scheduling or administrative purposes or emergencies provided:

(i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and

(ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows them an opportunity to respond.

(b) A judge may consult with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities, or with other judges, subject to the following:

(i) a judge shall take all reasonable steps to avoid receiving from court personnel or other judges factual information concerning a case that is not part of the case record. If court personnel or another judge nevertheless bring non-record information about a case to the judge's attention, the judge may not base a decision on it without giving the parties notice of that information and a reasonable opportunity to respond. Consultation is permitted between a judge, clerk-magistrate or other appropriate court personnel and a judge taking over the same case or session in which the case is pending with regard to information learned from prior proceedings in the case that may assist in maintaining continuity in handling the case;

(ii) when a judge consults with a probation officer about a party in a pending or impending criminal or juvenile case, the consultation shall take place in the presence of the parties who have availed themselves of the opportunity to appear and respond;

(iii) a judge shall not consult with an appellate judge, or a judge in a different trial court department, about a case that the judge being consulted might review on appeal; and

(iv) no judge shall consult with another judge about a case pending before one of them when the judge initiating the consultation knows the other judge has a financial, personal or other interest which would preclude the other judge from hearing the case, and no judge shall engage in such a consultation when the judge knows he or she has such an interest.

(b) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle civil matters pending before the judge.

(c) A judge may initiate, permit, or consider any ex parte communication when authorized by law to do so.

(8) A judge shall dispose of all judicial matters promptly, efficiently, and fairly.

(9) Except as otherwise provided in this section, a judge shall abstain from public comment about a pending or impending Massachusetts proceeding in any court, and shall require similar abstention on the part of court personnel.

(a) A judge is permitted to make public statements in the course of his or her official duties or to explain for public information the procedures of the court, general legal principles, or what may be learned from the public record in a case.

(b) This Section does not prohibit judges from discussing, in legal education programs and materials, cases and issues pending in appellate courts. This education exemption does not apply, however, to comments or discussions that might interfere with a fair hearing of the case.

(c) This Section does not apply to proceedings in which the judge is a litigant in a personal capacity.

(10) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

(11) A judge shall not disclose or use, for any purpose unrelated to judicial duties, information acquired in a judicial capacity that by law is not available to the public. When a judge, in a judicial capacity, acquires information, including material contained in the public record that is not yet generally known, the judge must not use the information in financial dealings for private gain. Notwithstanding the provisions of Section 3B(9), a judge shall not disclose or use, for any purpose unrelated to judicial duties, information that, although part of the public record, is not yet generally known, if such information would be expected unnecessarily to embarrass or otherwise harm any person participating or mentioned in court proceedings.

#### C. Administrative Responsibilities.

(1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice, maintain professional competence in judicial administration, and cooperate with other judges and court personnel.

(2) A judge shall require court personnel, including personnel who are directly involved in courtroom proceedings over which the judge presides, to observe the standards of fidelity and diligence that apply to the judge.

(3) A judge with supervisory authority for the judicial performance of other judges shall take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.

(4) A judge shall not make unnecessary appointments of counsel and staff. The judge shall exercise the power of appointment only on the basis of merit, avoiding appointments based on nepotism or personal or political favoritism. The judge shall not approve compensation of appointees beyond the fair value of service rendered.

#### D. Disciplinary Responsibilities.

(1) A judge having knowledge of facts indicating a substantial likelihood that another judge has committed a violation of the Code that raises a significant question about that judge's honesty, integrity, trustworthiness, or fitness for judicial office shall inform the Chief Justice of this court and of that judge's court. A judge having knowledge of facts indicating a substantial likelihood that another judge has committed a violation of the Code that does not raise a significant question of that judge's honesty, integrity, trustworthiness, or fitness for judicial office shall take appropriate action.

(2) A judge having knowledge of facts indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct that raises a significant question as to that lawyer's honesty, integrity, trustworthiness, or fitness as a lawyer shall inform the Bar Counsel's office of the Board of Bar Overseers.

E. Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer;

(b) the judge served as a lawyer in the matter in controversy;

(c) a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter in controversy;

(d) the judge has been, or is to the judge's knowledge likely to be, a material witness concerning the matter in controversy;

(e) the judge has personal knowledge of disputed evidentiary facts concerning the matter in controversy;

(f) the judge is a party to the proceeding or an officer, director, or trustee of a party or the judge knows, or reasonably should know, that he or she, individually or as a fiduciary, has (i) an economic interest in the subject matter in controversy or in a party to the proceeding, which interest could be substantially affected by the outcome of the proceeding, (ii) a relationship interest to a party to the proceeding where the party could be substantially affected by the outcome of the proceeding or (iii) any other more than de minimis interest that could be substantially affected by the outcome of the proceeding;

(g) the judge knows, or reasonably should know, that the judge's spouse or child wherever residing, or any other member of the judge's family residing in the judge's household, has (i) an economic interest in the subject matter in controversy or in a party to the proceeding, which



136 interest could be substantially affected by the outcome of the proceeding, (ii) a relationship  
137 interest to a party to the proceeding where the party could be substantially affected by the  
138 outcome of the proceeding or (iii) any other more than de minimis interest that could be  
139 substantially affected by the outcome of the proceeding; or

140 (h) the judge's spouse or domestic partner, as well as a person within the third degree of  
141 relationship to the judge, the judge's spouse, or the judge's domestic partner, or a spouse or  
142 domestic partner of such other person, (i) is a party to the proceeding or an officer, director, or  
143 trustee of a party, (ii) is acting as a lawyer in the proceeding, (iii) is known by the judge to have  
144 any more than de minimis interest that could be substantially affected by the outcome of the  
145 proceeding, or (iv) is to the judge's knowledge likely to be a material witness in the proceeding.

146 (i) Failure to adhere to the provisions of this section shall constitute a violation of due process.